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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. GARRET EIFERMAN, Defendant and Appellant.	B208887 (Los Angeles County Super. Ct. No. PA060459)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sanjay T. Kumar, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lance E. Winters and Michael A. Katz, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Garret Eiferman guilty of first degree burglary, receiving stolen property, assault upon a peace officer, felony evading an officer, and a second count of receiving stolen property. Eiferman thereafter admitted that he had suffered a prior strike conviction, a prior serious felony conviction, and four prior convictions for which he had served prison terms. The trial court sentenced Eiferman to serve a total term of 25 years and 4 months in state prison. We affirm.

FACTUAL AND PROCEDURAL HISTORY

The Brookside Apartments

In September 2007, Virginia Padilla worked as a property manager/supervisor at the Brookside Apartments in Chatsworth. On September 27, 2007, Padilla contacted the police to report that someone had broken into the apartment complex's storage unit, and had stolen boxes of files containing paperwork, including lease agreements and copies of personal identification provided by tenants, such as social security cards and paycheck stubs.

The Residential Burglary

On Sunday, November 18, 2007, Karen Kolway left her townhouse on Jeffrey Mart Court for a Thanksgiving vacation. When Kolway returned home on Saturday, November 24, two days after Thanksgiving, she saw that several items of her personal property were missing from the premises, including her laptop computer, printer, video camera, antique cameras, antique typewriter, and all of her jewelry. Her makeup, shampoo, laundry detergent and toilet paper, along with son's X-Box video game console and video games, were also missing.

Guillermo Lazo lived in a townhouse across a common alleyway from Kolway's townhouse. On Thanksgiving Day (November 22, 2007), Lazo was cleaning his garage when Kory McClung approached him and asked if a car blocking Kolway's garage door belonged to Lazo. When Lazo asked why she wanted to know, McClung said that she

needed to get out of Kolway's garage. Lazo knew that Kolway was out of town, and did not understand what McClung was talking about. When Lazo inquired further, McClung said she was Kolway's niece, and repeated that she needed to get out of Kolway's garage. Lazo moved his wife's car, and went back into his own garage. A few minutes later, Lazo saw a green Jeep driven by a "light-skin male" come out of Kolway's garage and stop. McClung came out a side gate at Kolway's home, "with things in her hands," and got into the passenger seat of the Jeep. The man and McClung drove away in the Jeep. The next day, Friday, November 23, 2007, Lazo saw the Jeep and McClung at Kolway's home again. McClung again had items in her hands, and the Jeep was "full of stuff." The same male was again driving the Jeep.

Arrest and Investigation

On Tuesday, November 27, 2007, Los Angeles Police Department Officer Scott Anderson and his partner were on patrol in a marked police car, when they saw a green Jeep which, based on the license plate and prior information obtained during the course of their police duties, they understood to be connected to Eiferman. The officers also had information that a "parolee-at-large" warrant had been issued for Eiferman, and decided to stop the Jeep, "to see if [Eiferman] in fact was the individual in the driver's seat."

When the officers activated their car's overhead lights and siren, Eiferman sped away. During the ensuing pursuit, Eiferman ignored stop signs and stop lights, drove through 40-mile-per-hour traffic zones at speeds up to 70 miles-per-hour, drove through a mall parking lot, and drove on the wrong side of the street. At one point, Eiferman drove into a cul-de-sac and Officer Anderson pulled his police car behind the Jeep. Eiferman accelerated, drove onto the sidewalk, and sideswiped Officer Anderson's vehicle. Eiferman crashed the Jeep into another police car driven by Officer Gabe Rodriguez, but still did not stop. The pursuit ended when Eiferman jumped out of his Jeep and tried to run, but was quickly caught by officers.

Eiferman's Jeep was taken to a police tow yard, where Detective Victoria Lim searched the vehicle and found a black, "rolling" briefcase that was filled with several manila files. The files contained lease agreements from the Brookside Apartments, along with copies of checks, and "everyone's personal information." Sometime later, Detective Lim showed the files to Virginia Padilla, the property manager at the Brookside complex. Padilla identified the materials in the files as being taken from the Brookside Apartments' storage unit back in September 2007.

Detective Floyd Walton investigated the burglary at Karen Kolway's residence. During an interview with Kory McClung (who was Kolway's niece), McClung stated that she took some jewelry from her aunt's house "one weekend," and that she had sold it for money at a jewelry store on Balboa Boulevard. McClung agreed to accompany Detective Walton to the jewelry store, where the proprietor brought out the jewelry that McClung had sold. Sometime later, Detective Kolway showed the jewelry to Kolway, and she identified the jewelry as having been taken from her home.

Trial

The People filed an information charging Eiferman with the burglary of Karen Kolway's residence (count 1); receiving stolen property, viz. the briefcase containing the Brookside Apartments' files (count 3); assault on a peace officer based on his crashing into Officer Rodriguez's police car (count 5); felony evading a peace officer (count 6); and receiving stolen property, viz. property stolen from Kolway's residence (count 8).[1] The information further alleged that Eiferman had suffered a prior strike conviction, a prior serious felony conviction, and four prior convictions for which he had served a prison term.

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[1] McClung was jointly charged with Eiferman in count 1, and was separately charged with petty theft (count 7). She was tried with Eiferman, but is not involved in this appeal.

At a jury trial in April 2008, the People presented evidence establishing the facts summarized above. Eiferman presented a partial alibi defense focusing on the Kolway burglary. According to the mother of a former girlfriend, Eiferman had been at her home from the day before Thanksgiving through the afternoon of Saturday, November 24, 2007, two days after Thanksgiving, and had not left.

The jury began deliberating on April 22, 2008, at 3:00 p.m., and went home the same day at 4:05 p.m. On April 23, 2008, at 2:05 p.m., the jury advised the bailiff that it had reached a verdict. Shortly thereafter, the jury returned its verdicts finding Eiferman guilty as charged. Later the same day, Eiferman waived his trial rights on the ancillary prior conviction allegations, and admitted that he had suffered a prior strike conviction, a prior serious felony conviction, and four convictions for which he had served terms in prison.

On June 16, 2008, the trial court sentenced Eiferman to state prison as follows:

Count 1 (burglary): upper term (6 years), doubled to 12 years;

Count 3 (receiving): 1/3 mid-term (8 months), doubled to 1 year and 4 months;

Count 5 (assault): 1/3 mid-term (16 months), doubled to 2 years and 8 months;

Count 6 (evading): 1/3 mid-term (8 months), doubled to 1 year and 4 months;

Count 8 (receiving): mid-term (2 years) stayed pursuant to section 654.

In addition to the terms cited above, the trial court imposed a 5 year term for Eiferman's prior serious felony conviction, plus 3 years for his prior convictions with a prison term. Eiferman's total sentence is 25 years and 4 months.

Eiferman filed a timely notice of appeal.

DISCUSSION

I. CALCRIM 3.76

Eiferman contends his burglary conviction (count 1) must be reversed because the trial court wrongly instructed the jury with CALCRIM No. 3.76, and erred when it answered a jury question about the instruction. We disagree.

The Instruction

As it related to the burglary charge, the trial court instructed Eiferman's jury with CALCRIM No. 3.76 as follows:

"[I]f you conclude that Defendant Eiferman knew he possessed Ms. Kolway's property and you conclude that the property had, in fact, been recently stolen, you may not convict the defendant of receiving that stolen property or committing a burglary at Ms. Kolway's house based on those facts alone. However, if you also find that supporting evidence tends to prove his guilt, then you may conclude that the evidence is sufficient to prove he received that stolen property and/or committed the burglary.

"The supporting evidence need only be slight and need not be enough by itself to prove guilt. You may consider how, where, and when the defendant possessed the property, along with any other relevant circumstantial evidence tending to prove his guilt of receiving that property and/or burglary.

"Remember that you may not convict the defendant of any crime unless you are convinced that each fact essential to the conclusion that the defendant is guilty of that crime has been proved beyond a reasonable doubt.

"Moreover, in order to find a defendant guilty of any crime, you must conclude that the People have proven each element of that crime beyond a reasonable doubt."

Analysis

Eiferman argues that CALCRIM No. 3.76 as given "strongly implied" to the jurors that they did not need to "overcome any greater evidentiary hurdle to convict him on the burglary count than to convict him on the receiving count." We disagree.

The plain language of the instruction itself defeats Eiferman's argument. As given, CALCRIM No. 3.76 expressly told the jurors that, if they found that Eiferman knew he possessed Ms. Kolway's property, and if they also found that the property had in fact been recently stolen, they could "*not convict [him] of . . . committing a burglary at*

Ms. Kolway's house based on those facts alone." The instruction expressly told that jury there needed to be "supporting evidence" in addition to the evidence of possession, and that each element of the crime must have been proven beyond a reasonable doubt. The court did not imply, strongly or otherwise, that no further evidence other than evidence of possession of stolen properly was necessary for them to convict Eiferman of burglary. To the contrary, the instruction concluded with a reminder that a guilty verdict required that "each element" of any crime be proved beyond a reasonable doubt by the People. This cautionary language was not undermined by the fact the instruction made reference to both receiving stolen property and burglary.

Eiferman further argues that the trial court erred in answering a note from the jury during deliberations. The jury's note reads:

> "WE WANT MORE CLARIFICATION ON AIDING & ABETTING CHARGES. WHAT IS REQUIRED FOR THESE CHARGES TO APPLY. CLARIFICATION ON SLIGHT EVIDENCE ON COLLABORATION."

The trial court answered the jury's note by reading them a further instruction (prepared after talking to the lawyers) that aiding and abetting was not a criminal charge, but a theory of liability on which the People were relying to prove that Eiferman was guilty of the burglary at Kolway's home. More specifically, the court told the jury that it was the People's theory that McClung was the "perpetrator," and that Eiferman was the person "who aided and abetted the perpetrator." The court further instructed the jury: "There is no mention of slight evidence of 'collaboration' in the jury instructions. If you require additional clarification in this regard, please provide the Court with a note making specific reference to page number and line number in the jury instructions and specify in your question the specific type of clarification sought." No further questions came from the jury.

Eiferman contends the trial court should have given some guidance on the meaning of the "slight evidence" which was needed, in addition to any evidence of

knowing possession of stolen property, to prove the burglary charge. We are not convinced the trial court erred.

First, we do not share Eiferman's belief that the jury's question necessarily shows that it was confused about CALCRIM No. 3.76. The jury's request for clarification "on the slight evidence on collaboration" was made within the context of its request for clarification about the "aiding [and] abetting charges," and, in our view, reflects a request by the jury for guidance on the quantum and/or type of evidence needed to prove that Eiferman aided and abetted McClung in the burglary, not a request for clarification of CALCRIM 3.76. Our assessment of the jury's question is reinforced by the fact that the jury did not renew its request for clarification after the court provided its further aiding and abetting instruction. We also see no abuse of discretion in the trial court's request to the jury that, if it was not satisfied, then it should give the court a more specific explanation of its problem.

Second, the Supreme Court has repeatedly approved the predecessor to CALCRIM 3.76, holding it correctly stated the law allowing jurors to draw an inference between possession of recently stolen property and theft-related crimes. (See, e.g., *People v. Parson* (2008) 44 Cal.4th 332, 355-356 [in robbery and burglary case, CALJIC 2.15 properly given based on reason and common sense]; *People v. Smithey* (1999) 20 Cal.4th 936, 976-978 [CALJIC 2.15 properly given in case charging robbery and burglary].)

We reject Eiferman's reliance on *People v. Prieto* (2003) 30 Cal.4th 226, for a different result. In *Prieto*, the Supreme Court addressed whether CALJIC 2.15 should have been given where defendant possessed stolen property, and the issue was whether such possession tended to show defendant's involvement in a rape and murder during which the property was taken. The court said no, because non-theft crimes are not logically connected to possession of stolen property in the way theft crimes are. (*Id*. at p. 248-249.) Two other murder cases cited by Eiferman are similar. (*People v. Snyder* (2003) 112 Cal.App.4th 1200, 1225-1228; *People v. Barker* (2001) 91 Cal.App.4th 1166,

1172-1177.) This logical distinction is inapplicable where both charges referenced in the instruction are theft-based. Accordingly, and in light of the entirety of the instructions, the trial court did not err in failing to further clarify the distinction between the crimes of receiving stolen property and burglary.

II. Sufficiency of evidence

Eiferman contends the evidence is not sufficient to support his count 3 conviction for receiving stolen property, viz. the files stolen from the Brookside Apartments. The shortcoming, argues Eiferman, is that the evidence did not show that he knew the files had been stolen. We disagree.

When a criminal defendant challenges on appeal the sufficiency of the evidence in support of a conviction, the reviewing court's task is to determine whether, in light of the whole record, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. (*People v. Sanchez* (1995) 12 Cal.4th 1, 31-32.) Absent an express statement or admission, a defendant's mental state is not susceptible of direct proof, and may be inferred from the facts and circumstances surrounding the offense. (*People v. Pre* (2004) 117 Cal.App.4th 413, 420.) Where the prosecution has relied on circumstantial evidence to prove a fact at trial, the reviewing court applies the same substantial evidence test. (*People v. Sanchez*, *supra*, 12 Cal.4th at p. 32.)

We are satisfied that the evidence is sufficient to support Eiferman's conviction for receiving the Brookside Apartments' stolen files. First, he had possession of the files in the green Jeep which he was driving on the day he was arrested, and drove on prior occasions. Second, he fled the police when they tried to stop him. Third, the very nature of the files — lease agreements from a specific apartment complex, and photocopies of checks, social security cards and other personal information — suggest that they belonged to the apartment complex, and there was no explanation of who may have given the files to Eiferman, or how he came to possess the files. (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1575 [the supporting evidence required in addition to evidence of

possession to prove receiving stolen property need only be enough to show "suspicious circumstances" justifying the inference that defendant knew the property was stolen].)

Eiferman's argument that the evidence is insufficient because the Jeep was "packed full of stuff," including property belonging to at least two other individuals, and that other persons had driven the vehicle at different times, is, in our view, no more than an invitation for us to reweigh the evidence. This we will not do. The issue on appeal is not whether the evidence would have supported different findings by the jury, but rather, whether the evidence supports the findings that the jury did make. We are satisfied that the jury reasonably concluded that Eiferman received stolen property, knowing that the property had been stolen. It is a common sense conclusion.

DISPOSITION

The judgment is affirmed.

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O'NEILL, J.*

We concur:

FLIER, Acting P. J.

BIGELOW, J.

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* Judge of the Ventura County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.